Supreme Court, U.S.
FILED
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(1)

No.

In The

Supreme Court of the United States

October Term, 1993

L. SHIEH, ET AL.,

Petitioners,

vs.

ANDREW CASTELLANO, ET AL.,

Respondents.

L. SHIEH, ET AL.,

Petitioners,

vs.

W. CHRISTOPHER, ET AL.,

Respondents.

Petition for Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

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167 pp

THE QUESTION PRESENTED FOR REVIEW

Petitioners were/are always represented by lawyers at all relevant times. They do not appear in the court to argue their own cases, or communicate with opposing parties/counsel, or conduct discovery, or file pleadings. Neverthless, California courts have declared Petitioners in pro per and vexatious litigants, and issued a pre-filing order which in practice has been transformed into a pre-denial order prohibiting Petitioners and all of their lawyers from filing and maintaining any complaint, cross-complaint, appeal and writ. All complaints, cross-complaints, appeals and writs filed by Petitioners' lawyers were automatically dismissed without notice and hearing; defaults and default judgments were entered against petitioner Shieh in four different cases because he was not given by the court a right to defend; assault, battery and

breach of peace were committed against him and his one-year-old baby, because he has no right to sue. In the context of the foregoing, the questions presented are:

1. Whether the California Courts' pre-filing order, which prohibits Petitioners' lawyers from filing and maintaining complaints, cross-complaints, appeals and writs, and which results in (1) all requests for prefiling permission filed by Petitioners' attorneys being automatically denied; (2) all complaints, cross-complaints, appeals and writs originally filed by Petitioners' lawyers were denied; and (3) defendants' commission of assault and battery, as well as assault and breach of the peace against petitioner Shieh and his family members are exempt

from justice, in violation of petitioner Shieh's right to counsel, right to defend, and right to life, liberty and property.

2. Whether the California courts deprived of Petitioners of their right to due process of law, equal protection and First Amendment Rights by prohibiting their counsel from conducting discovery to prove Petitioners are not in pro per and are not vexatious litigants before declaring them vexatious litigants?

3. Whether the California court can constitutionally request Petitioners to post more than $44.5 million security within 30 days for the payment of the alleged in pro per defendants' attorney fees, otherwise there would be a dismissal of all actions with prejudice?

4. Whether the California Code of Civil Procedure Section 391, Subdivisions (b)(3) and (4) are unconstitutional on the basis of their vague, ambigucus, and boundless language, and the failure to meet the constitutional requirement of "certainty"?

ALL PARTIES TO THE PROCEEDING

PLAINTIFFS and PETITIONERS:

SAY & SAY, a California corporation and L. SHIEH, an individual

DEFENDANTS and RESPONDENTS:

1. In the Castellano case:

ANDREW CASTELLANO; GERALD HOLLINGSWORTH; FRANCISCA N. ARAIZA; IMPERIAL SAVINGS; HOUSEHOLD BANK; IVY YUEN; et al.

2. In the Christopher case:

O'MELVENY & MEYERS AND ITS GENERAL PARTNERS; GIBSON, DUNN & CRUTCHER AND ITS GENERAL PARTNERS; RICHARD TARLOW.

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IN THE SUPREME COURT

OF THE STATE OF THE UNITED STATES

October Term, 1993

L. SHIEH, ET AL.,Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF

CALIFORNIA,

COUNTY OF LOS ANGELES,

Respondents,

ANDREW CASTELLANO, ET AL.,

and

WILLIAM HIGHBERGER, ET AL.,

Real Parties In Interest.

To the Honorable William Rehnquist the Chief Justice and Associate Justices of the Supreme Court of the United States.

Say & Say, a California corporation

("Company"), and L. Shieh ("Shieh"), an individual (collectively "Petitioners"), pray that a writ of certiorari be issued to review the judgments of the Supreme Court of the State of California entered in the above-entitled cases on September 15, 1993.

I. OPINION BELOW

1. Decisions of the Supreme Court of California to the "petition for review". The opinion of the Supreme Court of California dated September 15, 1993, which denied the petitions for review, is unreported and is attached in Petitioners' Appendix D.

2. Decisions of the Court of Appeal. The judgment of the Court of Appeals dated June 24, 1993, which dismissed the appeal of April 28, 1993 in L. Shieh, et al. v Andrew Castellano is attached in

Appendix C. The judgment of the Court of Appeal dated June 17, 1993, which granted the motion to dismiss the appeal in L. Shieh, et al. v. W. Christopher, et al. , BC 054981 ("OMM"), is attached in Appendix C.

3. Minute orders of the trial courts, dated November 17, 1992 and April 22, 1993, which imposed a prefiling order upon Petitioners, are attached in Appendix A.

II. JURISDICTION

The judgments of the Supreme Court of California were entered on September 15, 1993, which denied Petitioners' petitions for review of the cases involving constitutional issues and other federal law issues. Under 28 U.S.C. §1257 (a), 28 U.S.C. §1651 (a), and the Supreme Court Rule 10.1(c), this

court will review a state judgment by writ of certiorari, if "a state court . . . has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal question in a way that conflicts with applicable decisions of this court."

III. FEDERAL LAWS INVOLVED

A. California court's pre-filing order is apparently in violation of the Fifth, Fourth, Sixth and Fourteenth Amendments to the U. S. Constitution, because it deprives Petitioners of their right to due process of law and equal protection by prohibiting Petitioners' counsel from filing any litigation, appeals and writs, by automatically dismissing all of Petitioners' cases without notice and hearing, and by

automatically entering defaults and default judgments against Petitioners. The California court's pre-filing order has constituted a taking of life, liberty and property without due process of law. This pre-filing/pre-denial order leaves Petitioners unprotected by law because any person can file a lawsuit against them but they cannot either defend or file a cross-complaint.

B. Section 391 et seq. of California Code of Civil Procedure ("CCP"), in general, and CCP §391, subdivision (b)(3) and (4), and §391.7, in particular, are unconstitutional in that they violate a litigant's fundamental right of due process of law, including right of access to court, right to sue, and the right to equal protection, as guaranteed by the Fifth Amendment and

Fourteenth Amendment to the U.S. Constitution.

C. The trial court's prohibiting Petitioners from conducting limited discovery is in violation of CCP §391.6, due process of law, and equal protection.

IV. STATEMENT OF CASE

A. Petitioner Say & Say is a California corporation ("Company"). The Company entered into retainer agreements with Araiza, Castellano, Hollingsworth, etc., for legal services for the Company. During their representation of the Company and third parties, aforesaid attorneys conspired with opposing parties/counsels and suddenly abandoned the clients' cases without taking steps to prevent prejudice through breach of contract, breach of fiduciary duty, and

deceit and collusion, etc.[1]

The OMM action concerned a lawsuit against Petitioners' former attorney Richard Tarlow and his conspirators O'Melveny & Myers ("OMM"), and Gibson, Dunn & Crutcher ("GDC") for legal manipulation, inducing breach of contract, breach of fiduciary duty, deceit and collusion, et al, which was filed in or about August, 1992.

After these two cases were filed, defendants in each case colluded and deceived the court in order to have Shieh declared a vexatious litigant.[2]

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[1]. This action, entitled as Say & Say, et al. v. Castellano, et al., L.A. Sup.Ct. Case No. BC 059833, was taken on or about July 15, 1992, against the former attorneys for breach of contract, breach of fiduciary duty, malpractice, etc.

[2] On or about August 28, 1992,

On November 17, 1992, the California superior court granted defendants' motions declaring petitioner Shieh a vexatious litigant ("VL"), and requiring Petitioners to post bond of more than $40 million in the OMM case, and more than $500,000.00 in the Castellano case[3]. Appendix A. The trial court

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defendant Highberger of GDC filed a motion to declare L. Shieh a vexatious litigant. In or about September, defendants Araiza, Castellano and Hollingsworth also filed the vexatious litigant motions prepared by defendant Highberger for their signatures against Shieh.

[3] Shieh's attorney filed a motion for reconsideration of the vexatious litigant declaration, representing to the trial court that Shieh was not in propria persona because he had been represented by attorneys, including the defendants in the within actions, that he has never appeared in the courtroom on behalf of his own case, he has never spoken or communicated with opposing

issued a prefiling order against Petitioners in both the Castellano case and OMM case. Appendix A.

On or about April 28, 1993, Petitioners' counsel filed notices of appeal in both cases. Appendix B.

On or about June 24, 1993 the California Court of Appeal dismissed the appeals of Castellano and OMM. Appendix C.

On or about July 20, 1993, Petitioners' counsel filed a petition for review in the OMM case, and a petition for review in the Castellano case on July 28, 1993 with the California Supreme Court. On or about

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parties and that he did not meet any of the vexatious litigant statutory requirements in California. These were totally disregarded by the trial court.

September 15, 1993, the California Supreme Court denied both of the petitions for review. The petition for writ of certiorari filed hereby.

V. REASONS FOR GRANTING WRIT

The legal theory and the law in this country prevent litigants from being deemed in propria persona when he/she is represented by counsel. The Fifth and Fourteenth Amendments to the U.S. Constitution guarantee that any person has a right of access to the courts, as an element of due process of law.

However, as the opinions in the aforementioned cases have shown, the California courts ignored the federal constitutional requirements and made unconstitutional decisions which: a) declared petitioner Shieh who has been represented by counsels to be in propria

persona and a VL; b) prohibited Petitioners' counsel from conducting discovery; c) required Petitioners to furnish $40,000,000.00 security for the in pro per defendants' attorney fee; d) imposed a prefiling order upon Petitioners and their attorney which results in (1) not only Petitioners allegedly "in pro per", but also their attorneys being unable to file any complaint, cross-complaint, appeals, and writs without the prefiling order; (2) all of Petitioners' prefiling requests were perfunctorily if not "automatically" denied, without exception; (3) Petitioners' cases were automatically dismissed without notice and hearing; (4) defaults or default judgments were automatically made against Petitioners when they were sued

because they lost their right to defend; (5) Petitioners are under the danger that their property may at any time be expropriated, their liberty may at any time be abridged or deprived, and their life may at any time be criminally injured; and (6) the California Court's prefiling order has constituted a taking of life, liberty, and property without due process of law, in violation of the basic principles of the U.S. Constitution.

Further, CCP §391 (b)(3) and (4) are prima facie unconstitutional because they fail to meet the constitutional requirement of "certainty": their language is ambiguous, their meaning is overbroad, and their content in nature constitutes a cruel or unusual punishment.

A. CALIFORNIA COURTS' PRE-FILING ORDER IS IN VIOLATION OF DUE PROCESS OF LAW BY PROHIBITING PETITIONERS' COUNSEL FROM FILING ANY LITIGATION, APPEALS, AND WRITS, WHICH RESULTS IN ALL PETITIONERS' CASES BEING AUTOMATICALLY DISMISSED, ALL LAWSUITS AGAINST PETITIONERS AUTOMATICALLY FAVORED, AND ALL PREFILING REQUESTS WERE AUTOMATICALLY DENIED

1. THE DEPRIVATION OF THE RIGHT TO SUE AND RIGHT OF ACCESS TO COURT BY THE PREFILING ORDER CANNOT BE JUSTIFIED BY THE INHERENT POWER OF INJUNCTIONS IN THE FEDERAL COURT AND COURTS IN OTHER STATES

On April 22, 1993, the California superior court issued a prefiling order against Petitioners. Under California Code of Civil Procedure ("CCP") Section 391.7[4], the issue is whether a

[4] CCP §391.7 reads in part as: "the

litigant's right to sue and right of access to court are substantially deprived by this statute because whether or not a prefiling order shall be issued completely depends on the court's mind. It is true that courts in this nation may have some inherent power to issue injunctions restricting a litigant's activities. It, however, "is an extreme remedy, and should be used only in exigent circumstances". [Emphasis added] (Pavilonis v. King 626 F.2d 1075 (1st

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court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of such an order by a vexatious litigant may be punished as contempt of court." (Emphasis added) [Civ.Pro. Sec. 391, 7, a].

Cir.). Such order should "remain very much the exception to the general rule of free access to the courts." [Emphasis added] (Id.; See also, De Long v. Hennessey 912 F.2d 1144).

It should be further noted that all of the injunctions, except California, are applied on a case-by-case basis. An injunction order should only restrict a litigant's activities in a specific case, but should not prohibit a litigant's separate or different cases, and future cases, etc. As the court held in In re Powell, (1988) 851 F.2d 427 (D.C.Cir.) that "such injunctions should only be issued in 'exigent circumstances' and as an exception and not a regular practice." (Emphasis added) Id.; See also, Rodney Stich v. United States of America, et al. (1991)

773 F.Supp.469, at 471.

In reading CCP §391.7, whenever a prefiling order is imposed upon a person it means the followings to him: (1) he cannot sue any people ; (2) he cannot file any kind of lawsuit; (3) he cannot file any lawsuit with any and all courts of California; (4) he cannot file any lawsuit for the rest of his life; (5) he cannot defend himself if he is sued by other people; (6) he has to prove that his lawsuit has merit and has not been filed for purposes of harassment or delay; and (7) even he has furnished the required security, but without the prefiling permission, he still cannot file litigation.

In the application of the unjustified CCP §391.7, the California court's pre-filing order imposed upon Petitioners is

absolutely unconstitutional. First of all, California court's prefiling order not only applies to the litigant in pro per but also applies to his attorney contrary to the plain language of §391.7; second, the prefiling order has no boundaries. Using the prefiling order, California court imposes a substantial, significant open-ended death penalty upon its litigants in exercising their fundamental rights. In practice, the prefiling order amounts to a pre-denial order: almost no request for prefiling order was granted in California cases, as shown by Petitioners' cases. Under the severe conditions imposed by the prefiling order a litigant's right to sue, right of access to court, and other fundamental rights are substantially

abridged, and even completely deprived. In Petitioners' cases, the California court required Petitioners to post $500,000.00 security in the Castellano case and more than a $40 million bond in the OMM case. Further, since Petitioners were prohibited from conducting limited discovery, they have no necessary opportunity to prove the merits of the cases and that their lawsuits were not filed for harassment or delay. This is a circular knot: the statute imposes upon a litigant some conditions and if they are satisfied the litigant can file a lawsuit; but, when the conditions are in fact not realizable, or practical, and they can never be satisfied, a litigant completely loses his right of access to court.

As actually happened in this instant

case, the more than $40 million bond is unaffordable for Petitioners as well as the vast majority of people in this Country, and further they have no way to conduct limited discovery to prove that they have a reasonable probability to prevail over defendants. Under this circumstance, the prefiling order amounts to the deprivation of a right to sue or right of access to court. Since the prefiling order also applies to Petitioners' counsel, their right to counsel is significantly abridged.

It is the nature of the judicial system in the United States that every person can seek a remedy from court, every party can present his gravaman to court, and all persons can go to court for justice and resolution for their dispute. The court is set up to hear

people's complaints and to adjudicate disputes among them. There is no basis, either in law or in practice, for the California court to issue the prefiling order which applies to both Petitioners and their counsel. The prefiling order in this instant case is no longer an issue of equitable power, since it cannot be justified by the U.S. Constitution and the inherent power of the court as a common law judiciary.

2. THE CALIFORNIA COURT'S PREFILING ORDER IN APPLICATION OF CCP §391.7 INCURS AN IRREPARABLY AND SERIOUSLY UNCONSTITUTIONAL CONSEQUENCE

After the prefiling order was imposed upon Petitioners, they suffered the following unconstitutional consequences:

(1) Petitioners are victims for beating, breach of the peace and

lawsuits filed by anyone in the world. Caucasians were free from justice for their assault, battery and breach of the peace against petitioner Shieh and his family members.

Shieh and his family members were subject to two assaults and breaches of the peace committed by California lawyers, Peter Mason, David Eisen and D. Jay Ritt, along with two non-lawyers, in May and June, 1993.

(2) The California courts' prefiling order not only prohibits Petitioners but also prohibits their counsel from filing any lawsuit, appeals and writs, in violation of the plain language of §391.7. Under this circumstance, Petitioners' life, property and liberty are under the danger of being deprived without due process of law because he

cannot defend and seek justice.

(3) Petitioners' requests for prefiling permission were automatically denied without exception. In Petitioners' cases, all prefiling requests to file notices of appeal and counterclaims were denied by the presiding judge without exception. The prefiling order in essence amounts to pre-denial order.

(4) Petitioners' cases were automatically dismissed solely because of the prefiling order: (a) Say & Say, et al. v. Eric Lindquist, et al., Sup. Ct. Case No. 706438, Ct. of Appeal Case No. G014699, was dismissed by the trial court on July 14, 1993, and the appeal was dismissed on September 17, 1993; (b) Say & Say, et al. v. Henry S. David, et al., Sup. Ct. Case No. 706439 was

dismissed by the trial court on August 26, 1993, and the "Appellants' request for leave to file a notice of appeal" was denied on September 17, 1993; (c) Say & Say, et al. v. Jesse Miller, was dismissed by the trial court on July 14, 1993, etc. The dismissals of thoses cases were without hearing.

For the California courts, a prefiling order is the sole citation to dismiss all cases, appeals and any prefiling requests of Petitioners; the courts find no need to provide Petitioners with prior notice or a hearing when dismissing their cases and appeals; nor have the courts been required to consider the merits of the case before dismissal; the California Court of Appeal no longer reviews whether the trial court's judgment is correct or not

before dismissing the appeal; disregards whatever the merits or authorities Petitioners may present to the court. The Petitioners' destiny has been previously determined. All cases automatically dismissed.

(5) When sued by other people, Petitioners will automatically lose the case, and default judgments will be automatically entered against them because they cannot file appeals if the trial court's judgment is against them. The apparent unjustice of the prefiling order is simply that it actually invites other people to sue Petitioners because the order allows other people to attack Petitioners but prohibits Petitioners from defending. This is part of the unusual and cruel nature of the California's prefiling order.

(6) Under the United States Constitution, the California court's prefiling order has constituted a taking of life, liberty and property without due process of law. Under the prefiling order, Petitioners are under the danger that their property may at any time be expropriated, their liberty may at any time be abridged or deprived, and even their life may at any time be criminally injured. The law does not protect or does not sufficiently protect those people who are imposed upon a prefiling order.

3. THE UNCONSTITUTIONALITY OF CCP SECTION 391.7 CANNOT BE JUSTIFIED BY A "COUNTERVAILING STATE INTEREST"

In Taliaferro v. William H. Hoogs 236 Cal.App.2d 521, 46 Cal.Rptr. 147, the court relied upon Cohen v. Beneficial

Industrial Loan Corp. [337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528] in upholding the constitutionality of CCP §391 (b)(1) and (2). It must be noted that the holding in Taliaferro was tested and amended in the landmark case Boddie v. Connecticut 401 U.S. 371, 91 S.t. 780, 28 L.Ed.2d 113 (1971) ("Boddie"). In Boddie, the U.S. Supreme Court expressly stated that a state statute imposing a significant impediment to exercise of the right must be justified by "a countervailing state interest of overriding significance." (Emphasis added) Id., at 377. [5]The U.S. Supreme

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[5] In reviewing the case, the U.S. Supreme Court thoroughly analyzed the Due Process of Law under the Fourteenth Amendment, and emphasized that the right of access to court is so important that "Without such a 'legal system,' social organization and cohesion are virtually

Court made the landmark statements in Boddie as follows: "Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurisprudence, this Court voiced the doctrine that '(w)herever one is assailed in his person or his property, there he may defend." Id., at 377.

Boddie further established that "a

impossible; with the ability to seek regularized resolution of conflicts individuals are capable of interdependent action that enables them to strive for achievements without the anxieties that would beset them in a disorganized society." Id., at 375.

statute or a rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question." (Emphasis added) Id., at 380.

In Aurelio Fregoso Jara v. Municipal Court of San Antonio Judicial District (1977) 137 Cal.Rptr. 533, 68 Cal.App.3d 673, Boddie was cited again by the California Court of Appeal. The "countervailing state interest" doctrine was reaffirmed as: "Boddie sets forth the principle 'that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty

through the judicial process must be given a meaningful opportunity to be heard." Id., at 539.[6]

The Aurelio court held "[the] state has the burden of demonstrating a compelling state interest to justify the infringement." [Emphasis original] Id., at 541. [7]

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[6] "Free access to the courts is an important and valuable aspect of an effective system of jurisprudence, and a party possessing a colorable claim must be allowed to assert it without fear of suffering a penalty more severe than that typically imposed on defeated parties." In re Marriage of Flaherty 31 Cal.3d 637 (1982), at 648.

[7] The Aurelio court further held that denial to petitioner Jara of a meaningful access to the courts also constitutes a denial of equal protection of the laws. [Id., at 541.] The asserted compelling state interests in Aurelio were: (1) maintaining a single language system; (2) discouraging frivolous

With respect to this instant case, is there any "countervailing state interest" to justify the prefiling order? No. CCP §391.7 has never been justified by any countervailing or compelling state interests. The California courts have not raised any state interests to justify CCP § 391.7 and their prefiling orders against Petitioners.

In application of the above-cited precedents, the U.S. Constitution, and

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litigation by imposing costs on all litigants; and (3) holding the maintenance of the courts within reasonable monetary limits. However, the Aurelio court concluded: "We find no merit in the contention that these state interests. . . are of such a substantial nature to justify the denial of access to the courts in civil cases. . ." (Emphasis added) [Aurelio, 68 Cal.App.3d 673, at 541.]

jurisprudence of common law, the deprivation of access to court and of the right to due process by the California prefiling order is beyond the equitable power of court, and is not and cannot be justified by any state interest.

B. THE CALIFORNIA COURT'S IMPOSITION OF MORE THAN $40 MILLION UPON PETITIONERS AS A SECURITY IN A SINGLE CASE IS UNCONSTITUTIONAL

On November 17, 1993, the California court declared Shieh a vexatious litigant, and set a bond to be posted in the OMM case, as high as $100,000.00 for each defendant, and $100,000.00 for each defendant in the Castellano case. The total security for the OMM case is $40 million, and $500,000.00 for the Castellano case. The more than $40

million bond is the highest in California and most probably in American legal history. It should be noted that in the Castellano case there were two defendants, among five defendants, who were in propria persona. Even if they win the case, the in propria persona defendants would not be entitled to attorneys fees because they do not actually incur such fees. [See, Kay v. Ehrler, _____U.S._____, 111 S.Ct. 1435, 1437-38, 113 L.Ed.2d 486, 492-93].

Further, with respect to the defendants who were not in propria persona, the $100,000.00 bond for each of them is extremely unreasonable. Is $100,000.00 an average or reasonable expense for a defendant in a civil action even if they are parties in the same law firm? Can the more than $40

million bond be justified by the U.S. Constitution? If the answer is "yes", we must reconsider the basic judicial system of this Country, considering how many people in this nation are able to post the more than $40 million bond in order to have an opportunity to get to court. If the answer is "no", reasonable minds must wonder why and how the extremely expensive bond was created? What is the purpose of CCP §391.1? What is the security designed for? What is the purpose of the California courts' order? Reasonable minds cannot obtain a logical explanation from the California court's order requiring the more than $40 million bond.

Furthermore, the California courts imposed an additional condition upon the furnishing of the security: the $40

million bond must be posted within 30 days. Since Petitioners were unable to furnish the security (in fact it is not affordable for most of Americans), their cases were dismissed by the California courts. The only explanation for the more than $40 million bond is that the California courts intended to protect the large, influential law firms from being sued by the minority Petitioners. The consequence is that Petitioners' right to due process of law, right to sue or right of access to court, and right to equal protection are completely taken from Petitioners by the trial court under the excuse of security.

C. THE CALIFORNIA COURT IS IN VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION BY PROHIBITING PETITIONER'S ATTORNEY FROM

CONDUCTING ANY DISCOVERY

In or about September, 1992, defendants in these cases filed 391.1 motions against Shieh. The California courts, however, prohibited petitioner Shieh's attorney from conducting any limited discovery to prove that Shieh was not in pro per and was not a VL until the required security is furnished. Since the more than $40 million bond is unaffordable, Petitioners have no way to be heard. As established in Boddie, the right to be heard is an inalienable element of due process of law; conducting discovery is an essential opportunity for a litigant, who might be declared a VL, to reveal the truth, and to let the court hear his argument, his authority and his story. When a §391.1 motion is filed against a

litigant, and when his right to discovery is prohibited, his real situation is: the court allows his opposite side to attack but prohibits him from defending.[8]

The California court's prohibition of Petitioners' counsel from conducting discovery is further in violation of equal protection. While prohibiting Petitioners' counsel from doing

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[8] Defendants in their motions intentionally deceived the court by including Shieh's relatives' cases and Shieh's clients' cases to be Shieh's own cases in order to have Shieh meet the vexatious litigant statutory requirements. Defendants further deceived the court that Shieh was in propria persona, totally concealing the facts that Shieh has been represented by attorneys, including the defendants themselves (Castellano, Araiza, Hollingsworth, Tarlow, and Wesley Rusch).

anything, the California court allowed defendant Highberger to subpeona the confidential retainer agreement between Petitioners and their former attorneys in violation of the stay. The essence of equal protection of law is: no people should have extra rights and no people should have extra duties before the law. In this respect, California court's decision is apparently discriminatory against minority litigants.

D. CCP SECTION (B)(3) AND (4) ARE UNCONSTITUTIONAL BECAUSE THEIR LANGUAGE IS UNCONSTITUTIONALLY VAGUE, AMBIGUOUS, OVERBROAD, AND FAIL TO MEET THE CONSTITUTIONAL REQUIREMENT OF "CERTAINTY" OR "CLARITY"

The legal authorities the California court cited in declaring Shieh a vexatious litigant are CCP §391 (b)(3)

and (4).

The vexatious litigant statute is patterned after §834 of the Corporations Code. The constitutionality of CCP §391 (b)(1) and (2), and § 391.1 were sustained by California Supreme Court in Taliaferro v. Hoogs (1965) 236 Cal.App.2d 521, 46 Cal.Rptr. 147, heavily relied upon the constitutionality of Corporation Code §834. The constitutionality of §834 of Corporations Code was relied on the holding of Beyerbach v. Juno Oil Co. 42 Cal.2d 11 [265 P.2d 1] ("Beyerbach"), while the holding of Beyerbach was based on Cohen v. Beneficial Industrial Loan Corp. 337 U.S. 541 [69 S.Ct. 1221, 93 L.Ed. 1528] ("Cohen"). The Cohen case upheld a New Jersey statute which is similar to §834 of Corporations Code.

Cohen v. Beneficial Industrial Loan Corp., supra, at p. 552. See also, Taliaferro v. Hoogs (1965) 236 Cal.App.2d 521, 46 Cal.Rptr. 147.

The constitutionality of §391 (b)(3) and (4), however, were never challenged and constitutionally tested by any courts in California. In 1990, (b) (3) and (4) were added to CCP §391. In all California cases, no ruling or opinion was ever made about the constitutionality of § 391 (b)(3) and (4). In reviewing CCP §391(b) (1), (2), (3) and (4), it could be easily found that (b) (3) and (4) have in fact replaced (b)(1) and (2). Therefore, the upholding of the constitutionality of (1) and (2) in Taliaferro is in fact no longer significant because (3) and (4) have actually replaced (1) and (2), and

the difference between (1), (2) and (3), (4) is so substantial that the existence of (1) and (2) is no longer practically significant.

Unlike CCP §391 (b)(1) and (2) which have provided the specific standards to apply and whose language is plain, (b)(3) and (4) are boundless, vague and ambiguous. Pursuant to the Due Process Clause of the Fourteenth Amendment, under the constitutional requirements of certainty and clarity, and the precedent established by this Court, the constitutionality of § 391 (b)(3) and (4) is seriously questionable.

1. CCP §391 (B)(3) IS UNCONSTITUTIONALLY VAGUE, AMBIGUOUS, OVERBROAD, AND THEN FAILS TO MEET THE CONSTITUTIONAL REQUIREMENT OF "CERTAINTY" OR "CLARITY"

(1). The language of (b)(3) is on its face unconstitutionally vague, ambiguous, and overbroad, and fails to meet the constitutional requirement of "certainty".

§391 (b)(3) reads as follows: "In any litigation while acting in propria persona, repeatedly files unmeritorous motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay." (Emphasis added) In this section, the following critical issues which may determine a litigant's destiny are presented to this Court: What does "frivolous" mean? How many times constitute "repeatedly"? What is the standard to test whether a paper is filed solely to cause unnecessary delay

or not? It is submitted that a court may have discretion to interpret statutory language. However, what the language of (b)(3) leaves the court is not a legitimate room for judicial interpretation, but an undefined area allowing the judiciary to arbitrarily create law. Under (b)(3), no litigant can foresee whether his conduct would be legitimate or not since the law does not tell him what is the tangible requirement for his behavior in litigation. In other words, the law leaves every litigant with the risk of being declared a VL for any activities conducted in proceedings. The undefined "Frivolous", "numerous" or "unnecessary delay" give the judiciary a "legitimate" basis for arbitrariness. This is not only beyond the discretion of court, but

it also improperly invades the legislative realm and deprives a litigant of his/her right to due process of law under the Fourteenth Amendment.

The constitutional standard of "certainty" has been established by numerous cases, including cases in this Court. In Charles Wright v. New Jersey (1985) 469 U.S. 1146, 105 S.Ct. 890 ("New Jersey"), Justice Brennan of this Court convincingly stated that N.J.Stat.Ann. §2c:39-5d is impermissibly vague in violation of the Due Process Clause of the Fourteenth Amendment." Id., at 1147. This court further illustrated the following standards in New Jersey:

"The standards for evaluating whether a statute is unconstitutionally vague are well settled: "Vague laws

offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policeman, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." [Emphasis supplied] Id., at 1148; See also, Grayned v. City of

Rockford, 408 U.S.104, 108-109, 92 S.Ct. 2294, 2298-2299, 33 L.Ed.2d 222 (1972).

This Court further stated, by citing Connally v. General Construction Co.,[9] that "[A] Statute which either forbids OR require the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." (Emphasis original) Id., at 1149.

CCP §391 (b)(3) cannot meet the established constitutional standards. First, reasonable minds would not know what constitutes "numerous", "repeatedly", "frivolous", or "unnecessary". Those words only provide

[9] 269 U.S.395, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926)

a general idea, not a standard or instruction by which reasonable minds can determine what is lawful and what is unlawful. Second, CCP §391 (b)(3) may trap the innocent by not providing prior warning.[10] Third, the vague language of (b)(3) impermissibly delegates basic policy matters to judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.[11] The vague

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[10] For instance, if a litigant has filed one "frivolous pleading" in a proceeding, he will never know how many more "frivolous papers" he can file to meet the "repeatedly" or "numerous" before being declared a vexatious litigant. One more? Two? Neither he, nor the judge knows, because the statute does not define it. Under the circumstances, a person of ordinary intelligence cannot reasonably guess the statute's reaction to his/her conduct.

14 In applying CCP §391 (b)(3),

language of the vexatious litigant statute is the very one that this Court and the Fourteenth Amendment expressly prohibit because it delegates a basic policy matter to judges for resolution on an ad hoc and subjective basis, with the dangers of arbitrary and discriminatory application. In Wright, this Court held that the phrase: "was not 'easily understood or recognized' from the circumstances" in the New Jersey statute is unconstitutionally

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different judges may impose different standards upon a potential VL, and a judge may apply different standards to different potential VL. A litigant may be declared a VL only because he has filed two or three "unmeritorous papers," while another litigant may not be declared a VL because the judge does not take his activities as "repeatedly" although he has already filed five or more "unmeritorous papers".

vague. It is hard to differentiate CCP §391 (b)(3) from the New Jersey statute in vagueness, unambiguousness and overbreadth.

The warning and presumption of this Court in Wright were verified by the facts happened in this instant case. Before or during the period of November 17, 1992, the time when the California Court declared petitioner Shieh a VL under CCP §391 (b)(3) and (4), Shieh was represented by an attorney, and his attorney only filed very few papers with the court. Shieh, however, was arbitrarily declared a VL under §391 (3) and (4), required to post bond, and slapped with a prefiling order. Neither Petitioners nor their then counsel could foresee the warning from §391 (b)(3).

(2). The highly uncertain, vague, and

ambiguous language amounts to delegating basic policy matters to judges for resolution on an ad hoc and subjective basis with the attendant dangers of arbitrary and discriminatory application. [Wright v. New Jersey, 469 U.S. 1146, 105. S.Ct. 890, at 1149] The California vexatious litigant statute concerns due process of law. When a person is declared a VL, he/she is subject to a prefiling order and furnishing security for the rest of his/her life. CCP §391.1 neither provides what is a reasonable amount for the security nor indicates what shall be the basis for the amount of the security. The facts which happened in petitioner Shieh's case testifies to the dangers warned about in Wright. It was the undefined, vague and overbroad

language of the vexatious litigant statute that lets the court arbitrarily, subjectively determine a litigant's destiny without statutory limitation.

2. CCP §(B)(4) IS UNCONSTITUTIONAL FOR ITS VAGUENESS, OVERBREADTH, AND CRUEL OR UNUSUAL PUNISHMENT

Another authority the trial court cited in declaring petitioner Shieh a VL is CCP §391(b)(4). (b)(4) reads as: "Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence." (Civ. Pro. §.391.(b)(4).) The language of this section is unconstitutionally vague, overbroad, and constitutes a cruel or unusual punishment.

(1). (b)(4) does not define what is a "declaration", and what constitutes "previously been declared a vexatious litigant. . . of record". Is a judge's comment a "declaration"? What is the requirement for a "declaration"? Should a declaration pursuant to subdivision (b)(4) be a final declaration? By reviewing all of the cases about VL in California, no court, no precedent has ever illustrated what constitutes a "declaration" under CCP §391 (b)(4).[12] The vagueness and overbreadth of (b)(4)

[12] In De long v. Hennessey (1990) 912 F.2d 1144, the Ninth Circuit generally provided a guideline to the requirement for a "declaration": (1) adequate notice and opportunity to be heard before the order is entered; (2) adequate record for review; and (3) substantial findings of frivolous and harassing nature. Id., at 1145.

produce identical problems as §391 (b)(3): (1) any person of ordinary intelligence cannot foresee the result of his/her conduct, and cannot steer between lawful and unlawful conduct; and (2) the law impermissibly delegates basic policy matters to judges for resolution on an ad hoc and subjective basis with attendant dangers of arbitrary and discriminatory application. A judge may take a previous "comment" as a declaration of VL and then solely rely on it to declare a litigant a VL, but another judge may not take such a comment as a declaration and does not think a litigant can be declared a VL in reliance upon the comment.

In this instant case, one of the "citations" the California court applied

to petitioner Shieh is that Shieh had been declared a VL by federal court Judge Pfaelzer. But, the truth is that Judge Pfaelzer had once made a comment to Shieh's counsel Lance Haddix that it is "ridiculous" to hold general partners of a general partnership jointly and severally liable in accordance with §15015 of the California Uniform Partnership Act. There was no order to show cause, no hearing, no prior notice, no motion for declaration of VL against Shieh, and no ruling of such declaration. Only such a comment was taken as a declaration of VL pursuant to §391 (b)(4) by the California court Judge Kakita, and then Shieh was given the label of VL. The vagueness and overbreadth of (b)(4) is shown again by Ninth Circuit Justice Kreiger's dissent

to Judge Kakita's application of (b)(4)[13]. So, were Shieh's case assigned to Justice Kreiger, he would not have been declared a VL under §391 (b)(4).

Further, should a declaration be final? CCP §391 (b)(4) does not describe whether a declaration is a judgment or not, or whether, if the answer is yes, a judgmment need be final or not.

The vagueness, overbreadth and self-

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[13] Justice Kreiger stated: "I also think that to the extent that other judges may have made comments about Mr. Shieh, those are in some ways irrelevant because they were not findings that he is a vexatious litigant pursuant to the statute. . ." "The others -- I mean I've expressed my view, but I'm - as to some litigant, but I do not think that means they are vexatious litigants just because I say they are, unless there is an appropriate motion." [The Transcript of Feberuary 18, 1993 hearing] (Emphasis added).

conflict of CCP §391 (b)(4) are further demonstrated by the fact that there are fifty states in this nation, there are fifty different, maybe conflicting, standards for a declaration of VL, and a litigant may be declared a VL by one of the states. A California litigant may have to grapple with different standards of different states, and is under the danger that he might be declared a VL by a California court at any time only because he may have once been enjoined by a court in other state, although it may have happened a long time ago and its validity has disappeared for a long time, or perhaps had been a recipient of a comment by judge. Should the California court take it as a declaration of being a vexatious litigant? California imposes an

extremely strict condition upon its litigants, creates a boundless statute for its litigants, and sets up a system which is "exceptional" enough to be inconsistent with federal constitutional framework. Why should a litigant pay more in California than in any other state to exercise his/her right to due process, right to sue and right of access to court?

(2). CCP §391 (b)(4) constitutes an unconstitutionally cruel or unusual punishment. Under §391 (b)(4), once a litigant is declared a VL, he has no way of access to all state courts for the rest of his life, and his fundamental rights to due process and equal protection are actually and completely destroyed. Such a penalty is indistinguishable from a "death knell"

for a lawyer.[14]

"Cruel or unusual punishment" not only applies to criminal cases because all of the sufferings in a criminal case may happen in a civil case. First, in a civil case, a declaration of VL might cause criminal consequences, such as a contempt of court. This criminal consequence brings a civil issue into the criminal domain. Secondly, once an individual is erroneously declared a VL,

[14] CCP §391 (b)(4)'s punishment is ever more severe than the criminal cruel or unusual punishment because once a litigant is deemed a VL, he no longer can get to court to argue his case, to protect his interest and right, even to defend himself, if he does have enough money to post bond. "Cruel in its ordinary meaning -- causing physical pain or mental anguish of an inhumane or torturous nature." (People v. Anderson (1972), 6C.3d 28, 493 P.2d 880, 100 C.R. 152, Id., at 646).

he loses all his rights of access to courts in pro per or through his attorney forever. Thirdly, the declaration of an individual as a VL not only deprives him of his fundamental rights such as right of access to courts and right to due process, but also causes him mental anguish and damages his reputation and dignity. In this instant case, petitioner Shieh has economically, physically and mentally suffered from his being declared a vexatious litigant.

3. **IN APPLYING THE ESTABLISHED DOCTRINES BY THE U.S. SUPREME COURT, THE UNCONSTITUTIONAL VAGUENESS AND OVERBREADTH OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTION (B) (3) AND (4) CANNOT BE REMEDIED BY LANGUAGE OF THE VEXATIOUS LITIGANT STATUTE IN OTHER STATES**

In reviewing the laws of all of the 50 states in the United States, it is found that only the State of California enacted the "vexatious litigant statute." California is an exception in the United States legal system, and this "exception" substantially abridges the "right to sue", "right of access to court", "due process of law", and "equal protection." The case law has further established that a standardless proscription is not enforceable. "The enforcement of such a standardless proscription would appear to be 'the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the

estimation of the court and jury." [15,16]

In Papachristou v. City of Jacksonville, supra, 405 U.S., at 162, 168, 92 S.Ct., at 843, 846, the court held that "Rather, there appears to be a grave danger that enforcement of the law will focus on the groups that historically have been the targets of vague legislation such as this -- the poor, the minorities, the politically unpopular, and others who happen to be viewed with suspicion by the community's

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[15] See, United States v. L. Cohen Grocery Co. 255 U.S. 81, 89, 41 S.Ct. 298, 300, 65 L.Ed, 516 (1921); See also, Wright v. New Jersey 496 U.S. 1146, 105 S.Ct. 890, at 1150.

[16] "If read literally, the statutory language would encompass countless situations which the Legislature could not have intended as the subject of prosecution." Id., fn3., at 1150.

majority." (Emphasis added) Id.

In Wright, The New Jersey Supreme Court made two arguments to defend petitioner Wright's challenge: (1) a statute will not be struck down unless it is "impermissibly vague in all its applications." [citation]; (2) "a statute that might be impermissibly vague with respect to some conduct may not be challenged by one whose conduct quite clearly is prohibited by its terms." [citation] Id., at 1152. But, this Court rejected New Jersey Supreme Court's arguments and held that these doctrines did not bar Wright's challenge, for two reasons: First, the required standard of certainty is high, and a statute that does not satisfy this requirement may be invalidated on its face "even where it could conceivably

have . . . some valid application." [citation]; "Second, the challenged statute must prescribe some coherent, ascertainable standard in the first instance. Where the provision is vague 'not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all,' it is unconstitutional." (Emphasis added) Id., at 1152; See also, Coates v. City of Cincinnati 402 U.S. 611, 614, 91 S.Ct. 1686, 1688, 29 L.Ed.2d 214 (1971).[17] [18]

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[17] In Wright, Justice Brennan and Marshall in their strong dissenting opinion concluded: "There is no question that the New Jersey Legislature and the courts below have been motivated in the enactment and construction of §2C:39-5d by the necessity vigorously to combat.

In reviewing the above-cited cases, the essential factor in determining whether a statute is unconstitutionally vague or not is that whether or not the statute specifies a coherent, ascertainable standard for litigant's conduct. In applying the established doctrines of this Court, the language of CCP §391 (b)(3) and (4) simply fail to meet the constitutional requirement of "certainty" or "clarity".

VI. CONCLUSION

Petitioner seeks review on a writ of certiorari under the United States

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[citation]. As important as this goal is, however, 'it cannot justify legislation that would otherwise fail to meet constitutional standards for definiteness and clarity.'" (Emphasis added) Id., at 1153.

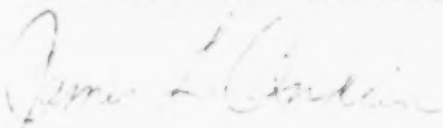
Supreme Court Rules, Rule 10.1 (c). The California court's prefiling order and the 1990 version of Code of Civil Procedure §391 et seq. are posing substantial conflicts with the Constitution of the United States. Its application to this instant case is particularly unconstitutional. This type of action constitutes State Action and has deprived Petitioners of their right to due process, right to equal protection, right of access to court and right to sue. Thus, Petitioners pray that a writ be issued to the California Supreme Court to protect Petitioners' fundamental rights and constitutional rights and undo the impact of the erroneous orders.

In light of the foregoing, this Petition for a writ of certiorari should

be granted.

DATED: December 13, 1993

RESPECTFULLY SUBMITTED,



JAMES L. ANDION
Law Office of James L. Andion
301 N. Lake. Ave. Suite 720A
Pasadena, CA91101

COUNSEL FOR PETITIONER
LIANG-HOUH SHIEH

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 11/17/92 DEPT. 14

HONORABLE EDWARD KAKITA JUDGE

J. BESINAIZ
DEPUTY CLERK

HONORABLE JUDGE PRO TEM

ELECTRONIC RECORDING
MONITOR

M. LANGIE DEPUTY SHERIFF

E. BANDA LARA
REPORTER

9:00 AM

BC 054981 Plaintiff RICHARD HOPKINS (X)
L. Shieh Counsel Lucien Schmit (X)
VS D. JAY RITT (X)
Warren Christopher, et al
Defendant
Counsel

RELATED TO BC041515 KENNETH KINGSHILL (x)
RECUSED: PAUL BOLAND
MARK KENNEY (x) FOR DEPT.
GARY HOLLINGSWORTH (x)
ANDREW CASTELLANO (x)
RICHARD TARLOW (x)
WILLIAM HIGHBERGER (x)

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANTS, O'MELVENY & MYERS and GIBSON, DUNN & CRUTCHER PURSUANT TO C.C.P. SECTION 391.1 FOR ORDER REQUIRING

SECURITY AND FOR A PRE-FILING ORDER PURSUANT TO C.C.P. SECTION 391.7; MOTION OF DEFENDANT, RICHARD G. TARLOW FOR ORDER REQUIRING PLAINTIFF TO POST SECURITY AS VEXATIOUS LITIGANT; JOINDER OF ABOVE DEFENDANT IN CO-DEFENDANT, O'MELVENY & MYERS' MOTION PURSUANT TO C.C.P. SECTION 391.1 FOR ORDER REQUIRING SECURITY; MOTION OF DEFENDANTS, O'MELVENY & MYERS AND GIBSON DUNN & CRUTCHER PURSUANT TO C.C.P. SECTION 1987(C) TO PRODUCE DOCUMENTS;

Motions for orders requiring security and require a pre-filing order are granted. Plaintiff, L. Shieh, is declared a vexatious litigant, pursuant to Section 391(b)(3) and (4). Plaintiff is to post a security of $100,000.00 per defendant and is ordered to obtain a

pre-filing order prior to the filing of future litigation.

Remaining matters and future matters are stayed until bonds are posted.

Motions for orders requiring sdecurity are continued to December 17, 1992, at 9:00 a.m., in this department to determine if plaintiff has posted bonds on each defendant or alternatively to dismiss actions as to all defendants in related cases.

Counsel Highberger is to prepare order and give notice.

MINUTES ENTERED
11/17/92
COUNTY CLERK

PAGE 1 DEPT. 14

DECLARATION OF SERVICE BY MAIL

Geri D. Hollins declared as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, California 90071, in said County and State; I am readily familiiar with Gibson, Dunn & Crutcher's practice in its above-described Los Angeles office for the collection and processing of correspondence for mailing with the United States Postal Service; pursuant to that practice, envelopes placed for collection at designated locations during designated hours are deposited with the United States Postal
Service with first class postage thereon fully prepaid that same day in the

ordinary course of business; on the 16th day of December, 1992, I served the attached:

ORDER REQUIRING SECURITY PURSUANT TO C.C.P. SECTION 391.3, PRE-FILING ORDER PROHIBITING THE FILING OF NEW LITIGATION PURSUANT TO C.C.P. SECTION 391.7 AND ORDER TO SHOW CAUSE RE DISMISSAL ON FAILURE TO FURNISH SECURITY; AND MINUTE ORDER ENTERED NOVEMBER 17, 1992

by placing a true copy thereof in an envelope addressed to each of the persons named below at the address shown:

Lucien A. Schmit III, Esq.
Law Office of Lucien A. Schmit
301 North Lake Avenue, Suite 720
Pasadena, CA 91101

Richard R. Hopkins, Esq.

Law Office of Richard R. Hopkins
301 North Lake Avenue, Suite 720
Pasadena, CA 91101

Richard G. Tarlow, Esq.
Law Office of Richard G. Tarlow
23632 Calabasas Road, Suite 1052
Calabasas, CA 91302

and by then sealing and placing said envelope(s) for collection at a designated location at Gibson, Dunn & Crutcher's offices at 333 South Grand Avenue, Los Angeles, California 90071 during designated hours, for mailing on the above date, following ordinary business practice.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed

on this 16th day of December, 1992, at Los Angeles, California.

Geri D. Hollins

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 11/17/92 DEPT. 14

HONORABLE EDWARD KAKITA JUDGE

J. BESINAIZ
DEPUTY CLERK

HONORABLE JUDGE PRO TEM

ELECTRONIC RECORDING
MONITOR

M. LANGIE DEPUTY SHERIFF

E. BANDA LARA
REPORTER

9:00 AM

BC 059833 Plaintiff RICHARD HOPKINS (X)
SAY & SAY Counsel Lucien Schmit (X)
VS W. HIGHBERGER (X)
ANDREW CASTELLANO (X)

Defendant
Counsel
RICHARD TARLOW (X)
GARY HOLLINGSWORTH
RELATED TO BC041515KENNETH KINGSHILL (x)
MARK KENNEY (x) FOR DEPT.
D. JAY RITT (X)
MARK KENNEY (X)
RICHARD TARLOW (x)

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANT, FRANCISCA N. ARAIZA TO STRIKE AND FOR SANCTIONS, OR IN THE ALTERNATIVE, FOR AN ORDER REQUIRING

SECURITY AND TO REQUIRE A PRE-FILING ORDER; DEMURRER OF DEFENDANT, GARY HOLLINGSWORTH TO COMPLAINT MOTION OF ABOVE DEFENDANT PURSUANT TO C.C.P. SECTION 391.1 FOR AN ORDER REQUIRING PLAINTIFF TO FURNISH SECURITY AS A VEXATIOUS LITIGANT, AND FOR A PRE-FILING ORDER PURSUANT TO C.C.P. SECTION 391.7; DEMURRER OF DEFENDANT, ANDREW CASTELLANO TO COMPLAINT; MOTION OF ABOVE DEFENDANT PURSUANT TO C.C.P. SECTION 391.1 FOR AN ORDER REQUIRING PLAINTIFF, SHIEH TO FURNISH SECURITY OF $100,000.00 AS A VEXATIOUS LITIGANT AND FOR A PRE-FILING ORDER AGAINST PLAINTIFF, SHIEH, PURSUANT TO C.C.P. SECTION 391.7;

Motions for orders requiring security and require a pre-filing order are granted. Plaintiff L. Shieh, is

declared a vexatious litigant poursuant to Section 391(b)(3) & (4), Code of Civil Procedure. Plaintiff is to post a security of $100,000.00 per defendant and is ordered to obtain a pre-filing order prior to the filing of future litigation.

Remaining matters and future matters are stayed until such bonds are posted.

Motions for orders requiring security are continued to December 17, 1992, at 9:00 a.m., in this department to determine if plaintiff has posted bonds on each defendant or alternatively to dismiss actions as to all defendants in related cases.

MINUTES ENTERED
11/17/92

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 11/17/92 DEPT. 14

HONORABLE EDWARD KAKITA JUDGE

J. BESINAIZ
DEPUTY CLERK

HONORABLE JUDGE PRO TEM

ELECTRONIC RECORDING
MONITOR

M. LANGIE DEPUTY SHERIFF

E. BANDA LARA
REPORTER

9:00 AM

BC 059833 Plaintiff RICHARD HOPKINS (X)

SAY & SAY Counsel Lucien Schmit (X)

VS W. HIGHBERGER (X)

ANDREW CASTELLANO (X)

Defendant

Counsel

GARY HOLLINGSWORTH

RELATED TO BC041515 KENNETH KINGSHILL (x)

D. JAY RITT (X)

MARK KENNEY (X)

RICHARD TARLOW (x)

NATURE OF PROCEEDINGS:

Counsel, Highberger, is to give notice and prepare the order.

MINUTE ENTERED

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 04/22/93
DEPT. 14
HON. EDWARD KAKITA JUDGE
J. BESINAIZ
DEPUTY CLERK

HON. JUDGE PRO TEM ELECTRONIC
RECORDING
MONITOR
V. GALLUCCI Deputy Sherrif
J. WYATT Reporter

9:00 am BC059833
Plaintiff
Counsel
JAMES L. ANDION (X)
SAY & SAY
RICHARD HOPKINS (X)
VS
ANDREW CASTELLANO
Defendant
Counsel
Gary Hollingsworth (X)
ANDREW CASTELLANO (X)
JOHN HENDRY (X)
RELATED TO BC041515

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANT, IVY YUEN PURSUANT TO C.C.P. SECTION 391.1 FOR AN ORDER REQUIRING PLAINTIFFS TO FURNICE SECURITIES AS A VEXATIOUS LITIGANT, AND FOR A PRE-FILING ORDER PURSUANT TO C.C.P. SECTION 391.7;

Motion is granted.

Defendant Household Bank's motion for an order requiring vexatious litigant to post security is set for May 24, 1993, at 9:00 a.m., in this department.

Court orders that L. Shieh appear in this court on May 24, 1993, at 9:00 a.m.

Counsel, Gary Hollingsworth, is to

give notice.

MINUTES ENTERED

04/22/93

COUNTY CLERK

PAGE1 DEPT.14

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 04/22/93
DEPT. 1
HON. EDWARD KAKITA JUDGE
J. BESINAIZ DEPUTY CLERK
HON. JUDGE PRO TEM

ELECTRONIC
RECORDING
MONITOR

V. GALLUCCI Deputy Sherrif
J. WYATT Reporter

9:00 am.
BC054981

Plaintiff RICHARD HOPKINS (X)
L. SHIEH Counsel
VS
W. Christopher, et al
Defendant WILLIAM
Counsel HIGHBERGER (X)
RICHARD TARLOW (X)

RELATED TO BC041515
RECUSED: PAUL BOLAND

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANTS TO QUASH

NOTICE OF DEPOSITION AND FOR A PROTECTIVE ORDER AND REQUEST FOR SANCTIONS;

MOTION OF PLAINTIFF, L. SHIEH TO COMPEL DEPOSTITION, TO STAY DEFENDANT'S DISCOVERY UNTIL THE COMPLETION OF PLAINTIFFS' DISCOVERY, FOR SANCTIONS;

Motion to quash is granted. Motion to compel denied. Requests for sanctions are continued to June 3, 1993, at 9:00 a.m., in this department.

Court orders that L. Shieh appear in this court on May 24, 1993, at 9:00.a.m..

Counsel, William Highberger, is to give notice to both plaintiffs attorneys

of record.

MINUTES ENTERED

04/22/93

COUNTY CLERK

PAGE 1 DEPT. 14

EXHIBIT B

(ORIGINALED FILED APRIL 28, 1993
LOS ANGELES SUPERIOR COURT STAMPED)

James L. Andion
LAW OFFICE OF JAMES L. ANDION
301 N. Lake Avenue, Suite 720D
Pasadena, CA. 91101
(818) 405-0344

Attorney for Plaintiffs
Say & Say and L. Shieh

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

SAY & SAY et al.,	) CASE NO.BC 061170
Plaintiffs	) NOTICE OF APPEAL
vs.	)
ANDREW CASTELLANO et al.,	)
Defendants,	)

NOTICE IS HEREBY GIVEN that plaintiffs in the above-entitled action,

Say & Say and L. Shieh, hereby appeal to the Court of Appeal of State of California from any and all of the rulings, decisions, orders and judgments, etc. (collectively "Orders") issued, rendered and entered by the Superior Court for the County of Los Angeles in the within action, on and before April 28, 1993, as well as orders executed by that court subsequently in connection with the above Orders.

Dated: April 28, 1993

James L. Andion

James L. Andion

Attorney for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA,

COUNTY OF LOS ANGELES

I am in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my address is: 301 North Lake Avenue, 7th Floor, Pasadena, CA 91101. on April 28, 1993, I served the foregoing document described as NOTICE OF APPEAL on all interested parties in this actiion.

( ) by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
(X) by placing ( ) the original (X) a true copy thereof enclosed in sealed envelopes addressed as follows:
Andrew Castellano

1004 Arroyo Drive, No. 2
South Pasadena, CA. 91030
(Defendant In Pro Per)

John A. Hendry
HENDRY, SERIAN, ALT & JOUANICOT
35 N. Lake Ave., Suite 650
Pasadena, CA. 91101
(For Defendant Household Bank)

Gary Hollingsworth
55 S. Lake Avenue, Suite 220
Pasadena, CA. 91101
(Defendant In Pro Per)

Mark J. Kenney
SEVERSON & WERSON
One Embarcadero Center, 25th Fl.
San Francisco, CA. 94111
(For Defendant Francisca N. Araiza)

(X) By Mail

(X) I deposited such envelope in the mail at Pasadena, California.
The envelope was mailed with postage thereon fully prepaid. practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on cancellation date or plostage meter date is more than one day after date of deposit for mailing in affidavit. Executed on April 28, 1993, at Pasadena, California.

( ) BY PERSONAL SERVICE I delivered such envelope by hand to the offices of the

addressee. Executed on April 28, 1993, at Pasadena, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

( ) (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

T. Pan	T. PAN
Type or Print Name	Signature

[c:\L\CASTELLA\PROOF.426] 4B

(ORIGINALED FILED JUNE 8, 1993
LOS ANGELES SUPERIOR COURT STAMPED)

James L. Andion
LAW OFFICE OF JAMES L. ANDION
301 N. Lake Avenue, Suite 720D
Pasadena, CA. 91101
(818) 405-0344

Attorney for Plaintiffs and Appellants
Say & Say, L. Shieh and Plaintiffs'
Attorney

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

L. SHIEH, SAY & SAY Plaintiffs and Appellants, vs. WARREN CHRISTOPHER et al., Defendants and Respondents.	CASE NO.BC 054981 NOTICE OF APPEAL

PLAINTIFFS AND APPELLANTS Say &

Say, a California corporation and L. Shieh, an individual ("Plaintiffs") and plaintiffs' attorneys hereby appeal to the Court of Appeal of the State of California, Second Appellate District, from any and all rulings, decisions, judgments and orders (collectively "Orders") rendered, issued or made by the above-entitled court, on and before the date of the filing of this Notice of Appeal, and any and all rulings, decisions, judgments and orders rendered, issued or made by the above entitled court subsequently in connection with, arising under or relating to the above Orders.

Dated: June 7, 1993

James L. Andion

James L. Andion

Attorney for Plaintiffs/
Appellants and
Plaintiffs' Attorneys

PROOF OF SERVICE

STATE OF CALIFORNIA,

COUNTY OF LOS ANGELES

I am in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my address is: 301 North Lake Avenue, 7th Floor, Pasadena, CA 91101. on June 7, 1993, I served the foregoing document described as NOTICE OF APPEAL on all interested parties in this actiion.

( ) by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
(X) by placing ( ) the original (X) a true copy thereof enclosed in sealed envelopes addressed as follows:

Richard Tarlow, Esq.
23632 Calabasas Rd.
Suite 105
Calabasas, CA. 91302
(In Pro Per)

William Highberger, Esq.
Gibson, Dunn & Crutcher
333 S. Grand Ave.
Los Angeles, CA. 90071
(for GDC defendants and O'Melveny
& Myers defendants)

(X) By Mail

(X) I deposited such envelope in the mail at Pasadena, California.
The envelope was mailed with postage thereon fully prepaid. practice of collection and processing correspondence for mailing. Under that practice it

would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on cancellation date or plostage meter date is more than one day after date of deposit for mailing in affidavit. Executed on June 7, 1993, at Pasadena, California.

( ) BY PERSONAL SERVICE I delivered such envelope by hand to the offices of the addressee. Executed on June 7, 1993, at Pasadena, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

( ) (Federal) I declare that I am

employed in the office of a member of the bar of this court at whose direction the service was made.

T. Pan	T. PAN
Type or Print Name	Signature

[c:\L\CHRIS\93S\PROOF.607] 4B

EXHIBIT C

OFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH LANE, CLERK

DIVISION: 5 DATE: 06/24/93

James L. Andion
301 N. Lake Avenue
Suite 720D
Pasadena, CA. 91101

Re: Say & Say
vs.
Castellano, Andrew
2 Civil B076256
Los Angeles No. BC 059833

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

SAY & SAY et al.,	)	B0 75267
	)	(Super. Ct. No.
Plaintiffs	)	
and Appellants,	)	BC 059833)
	)	
vs.	)	
	)	
ANDREW CASTELLANO	)	
et al.,	)	
	)	
Defendants	)	
and Respondents.	)	
	)	

APPEAL from a judgment of the Superior Court of Los Angeles County. Edward Y. Kakita, Judge. Dismissed.

James Andion for Plaintiffs and Appellants.

Gary Hollingsworth, in pro. per., for Defendants and Respondents.

Plaintiffs, Say & Say and L. Shieh, ahve purported to appeal from "any and all the rulings, decisions, orders, and judgments, etc. (collectively 'Orders') issued, rendered and entered by the Superior Court for the COunty of Los Angeles in the within action, on and before April 28, 1993, as well as Orders executed by that court subsequently in connection with the above Orders." Defendant, Gary Hollingsworth, has filed an unopposed motion to dismiss the appeal. The uncontradicted under oath showing indicates the following: On November 17, 1992, the trial court granted a motion seeking to have plaintiffs declared vexatious litigants; for issuance of a prefiling order; and to require plaintiffs to post a secuirty. (Code

Civ. Proc., §391.7)[19] Plaintiffs then filed a peremptory challenge (§ 170.6) which was disallowed as untimely. (Rule 1104.1, Rules of Los Angeles Superior Court.) Plaintiffs then filed a challenge for cause (§170.1) which was denied. After a mandate petition to the Court of Appeal was denied, a motion seeking a reconsideration of the order denying the challenge for cause was denied. Later, another motion by a fictitiously named defendant to compel the filing of a security pursuant to the vexation litigant statute was granted.

We agree with defendants that none of the rulings up to the date of the notice of appeal were separately appealable orders and no final judgments

[19] All future statutory references are to the Code of Civil Procedure.

has been entered as appealable (Roston v. Edwards (1982) 127 Cal.App.3d 842, 846; §904.1) Nor are any of the rulings in connection with the disqualification proceedings. (People v. Hull (1991) 1 Cal.4th 266, 269-276; §170.3, subd. (d).) The uncontradicted record indicates that there were no appealable judgments entered prior to the April 28, 1993, date of the filing of the notice of appeal.

Plaintiffs have also purported to appeal from subsequent orders issued after April 28, 1993. No doubt, we have authority to deem a premature notice of appeal to be timely filed. Nonetheless, no showing of good cause has been made to permit us to do so pursuant to rule 2(c) of the California Rules of COurt.

Further, we note that after April 28, 1993, notice of appeal have been filed in supeior court in connection with made in this case.

The appeal is dismissed in its entirety as to all parties. All defendants including Gary Hollingsworth shall separately recover their costs on appeal jointly and severally from Say & Say and L. Shieh.

NOT TO BE PUBLISHED.

TURNER, P.J.

I concur:

GODOY PEREZ, J.

OFFICE OF THE CLERK

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

JOSEPH A. LANE, CLERK

DIVISION: 2 DATE: 06/17/93

James L. Andion

301 N. lake Avenue

Suite 720D

Pasadena, CA. 91101

Re: Shieh, L.

vs.

Christopher, Warren

2 Civil B075017

THE COURT:

MOTION TO DISMISS GRANTED.

EXHIBIT D

Second Appellate District, Division Five, No. B075267

S034281

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SAY & SAY ET AL., Appellants

v.

ANDREW CASTELLANO ET AL., Respondents

Petition for review DENIED.

Arabian

Acting Chief Justice

Second Appellate District,

Division Two, No. B075017

S034173

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

IN BANK

L. SHIEH, Appellant

v.

W. CHRISTOPHER ET AL., Respondents

Petition for review DENIED

Arabian

Acting Chief Justice

APPENDIX E

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF

THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Finding of	)	B 076978
	)	
LIANG-HOUH SHIEH,	)	(Filed
	)	Aug.12, 1993)
As a vexatious Litigant.	)	JOSEPHE A.LANE
	)	Clerk

ORDER declaring Liang-Houh Shieh, a vexatious litigant, and requiring leave of Court before filing any new matter.

James L. Andion for Liang-Houh Shieh.

INTRODUCTION

On July 7, 1993, this Court issued a written order to Liang-Houh Shieh (Shieh) to show cause before this court on July 28 why we should not declare him to be a vexatious litigant as defined by Code of Civil Procedure section 391, subdivision (b)(4), and issue a prefiling order pursuant to Code of Civil Procedure section 391.7, subdivision (a), prohibiting him from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. (In re Whitaker (1992) 6 Cal.App.4th 54, 55, review den. Jul. 22, 1992; In re Luckett (1991) 232 CAl.App.3d 107,108, review den. Sep. 25, 1991.) At the request of Shieh's counsel, the matter was advanced to July 27.

BACKGROUND

Over the past two years, Shieh has filed innumerable complaints in the federal and state courts, many of which are duplicative and most of which are based on substantially similar facts. These various suits have resulted in at least 19 writ petitions to this court and 1 to the Fourth District, some of which are duplicative and all of which have been denied. He and his counsel have been sanctioned separately three times for pursuing frivolous writ petitions.

In addition to the two duplicative appeals which promoted this proceeding (Fulbright & Jaworski v. Shieh (B068256, June 19, 1992; B075640, Apr. 26, 1993), which we recently dismissed largely for lack of jurisdiction and partly due to Shieh's failure to pay the sanctions imposed by the trial court or to post a bond to stay the order, Shieh has filed at

least 14 appeals in 9 separate matters. In Shieh v. Christopher (BO 75017, May 1, 1993), the appeal was dismissed on June 17, 1993 for lack of jurisdiction. In Hsieh v. Thompson (B064714, Feb. 1, 1993), review denied on May 19, 1993, and Shieh v. Newman (BO59327, Sept. 16, 1992), review denied December 30, 1992, the orders of dismissal were affirmed. In Say & Say v. Castellano (BO75267, Apr. 28, 1993), the appeal was dismissed for lack of jurisdiction on June 24, 1993. In Shieh v. Christopher (BO76400, May 28 and June 3, 1993), a motion to dismiss for lack of jurisdiction was filed on June 25 and Shieh was given until August 3, 1993 to respond. Of the remaining appeals, two are scheduled for oral argument on July 29, 1993, three are not yet or just have been fully briefed and four are not yet docketed. In short, Shieh has yet to

prevail in this court or in the lower courts.

In the matter which prompted this proceeding, Fulbright & Jaworski's complaint alleges in pertinent part that shortly after Shieh joined the firm as a partner, the firm became aware that Shieh had filed and still had pending "a facially offensive and inappropriate complaint in Los Angeles County Superior Court against a long-standing and well-regarded law firm, Graham & James. Shieh had concealed this fact from Fulbright by, among other things, suing Graham & James under a pseudonym. This fact, together with other inappropriate conduct of Shieh [delineated elsewhere in the complaint], caused Fulbright to reconsider Shieh's partnership in the firm."

Accordingly, on March 1, 1991, Fulbright & Jaworski partners Harry Hathaway (Hathaway) and David Ebershoff (Ebershoff)

discussed with Shieh conditions which the firm desired to attach to his partnership. Hathaway and Ebershoff asked Shieh to agree to these conditions and sign a memorandum of understanding to that effect. Although Shieh had agreed to the conditions, and further agreed that the terms of the memorandum accurately reflected the parties' agreement, he refused to sign the memorandum of understanding. Instead, he asked that his agreement be set forth in a confirming letter. A confirming letter dated March 19, 1991 from Hathaway to Shieh set forth the parties' agreement to be bound by the terms of the memorandum of understanding. Despite his agreement to do so, Shieh never dismissed the lawsuit against Graham & James. He also continued much of his other inappropriate conduct.

"On March 29, 1991, Shieh met with Hathaway and Ebershoff to discuss his

future at Fulbright. At that meeting, Hathaway and Ebershoff told Shieh that, because of the conduct described above, the firm had decided to terminate his partnership. Shieh denied he was bound by the terms of the Memorandum of Understanding and he demanded a full partnership vote on the issue of his termination. A partnership vote was later taken and Shieh was expelled from [the firm], effective March 31, 1991."

After Shieh's partnership was terminated, he attempted on several occasions to have firm employees with whom he had worked closely remove firm files and bring them to his home. He contacted all or most of the clients with whom he had been in communication during his brief partnership with the firm and "instructed them to sign a letter purporting, among other things, to give Shieh's attorney the right to all their files and their trust

account funds and he instructed them not to communicate at any time with anyone acting on behalf of Fulbright." Additionally, Shieh instructed these clients to not pay invoices Fulbright & Jaworski sent to them without Shieh's prior consent. In some cases, he "purported to 'release' them from any obligation to Fulbright.... Shieh told some of these clients that Fulbright was unethical and unprofessional and had misrepresented to Shieh the firm's financial condition and the terms of its partnership opportunities."

A controversy arose over which client files should be transmitted to Shieh. On approximately May 17, 1991, Shieh's then-attorney, Francisca Araiza, delivered to Fulbright & Jaworski "approximately 20 copies of purported file transfer letters. These form letters were not directed from the clients to Fulbright, but purported

instead to be from clients to Shieh's attorney, Araiza, among others. The form letters were not on the letterhead of clients. Replete with other defects, and absent independent confirmation of client desires, the letters were an insufficient basis on which to transfer files."

Both Shieh and his attorney "refused to accept Fulbright's assistance in preparing an appropriate file transfer letter, and claimed to 'prohibit' Fulbright from contacting any of the clients. As a result, Fulbright sent letters to each of the clients on whose behalf the form transfer letters were received attempting to confirm they wanted their files transferred. Almost without exception, clients did not respond these efforts to confirm their wishes. Unbeknownst to anyone at Fulbright, . . . Shieh had contacted [these clients] and instructed

them not to communicate with Fulbright at any time or respond to Fulbright letters."

Having instructed clients not to respond, Shieh "used Fulbright's inability to obtain direct client authorization for the transfer of their files to institute a campaign of harassing and baseless litigation in cases against Fulbright, some of its partners and Fulbright's lawyers. Shieh filed one action, entitled Shieh v. Ebershoff, et al, Case No. BC270441, in Los Angeles County Superior Court," in which he unsuccessfully sought an injunction prohibiting Fulbright & Jaworski from communicating with clients. "This case was brought by Shieh maliciously and without probable cause and for the purpose of harassing Fulbright. After a series of demurrers to the various versions of his complaints were sustained, Shieh dismissed the case while another demurrer was pending."

Among other cases Shieh filed in the Superior Court of Los Angeles is PSJ, et al. v. Hathaway, et al., No. BC033849, in which Shieh and another "counseled the commencement of litigation by other clients, . . . PSJ Corporation and Perry Chien, regarding the delivery of its files to Shieh. PSJ was represented in this litigation by Shieh and Hollingsworth." They did so notwithstanding all parties' knowledge that Fulbright & Jaworski had expressed a desire to deliver the files, requiring only a letter from PSJ and Chien asking that their files be transferred, and, therefore, Fulbright & Jaworski was not withholding the files wrongfully. Shieh "directed the filing and prosecution of this litigation in bad faith and without probable cause, and even though Shieh had instructed PSJ and Chien to ignore Fulbright's inquires about the clients' desires." The action "was filed,

served and prosecuted [solely] for the purpose of harassing Fulbright and obtaining improper leverage in the Shieh Action." On the eve of the depositions of PSJ and Chien, at which they "would be asked to explain their refusal to provide Fulbright with clear instructions," PSJ and Chien dismissed the action.

"In an effort to interfere with Fulbright's relationship with and harass clients," Shieh served subpoenas on clients "with whom Shieh had had no previous contact at any time, . . . seeking ten years worth of billing and financial records . . . In an effort to embarrass Fulbright, Shieh repeatedly filed . . . confidential financial documents irrelevant to the litigation which he knew Fulbright desired to keep private."

After dismissing the first Ebershoff action, Shieh filed Shieh v. Ebershoff[1] (Super. Ct. Los Angeles County, 1992, No. BC061170), acting in propria persona as co-counsel, a 180-page complaint purporting to state causes of action for RICO violations, breach of contract, breach of the covenant of good faith and fair dealing, seeking an accounting, defamation, fraud, seeking injunctive relief, discrimination in violation of 42 United States Code section 1981, conspiracy to discriminate, discrimination in violation of Civil Code section 52.1, intentional interference with economic relations, conversion, intentional infliction of emotional distress, declaratory relief, quantum meruit, nonpayment of wages, seeking penalties pursuant to Labor Code section 203,

[1] Shieh had filed a federal action entitled Shieh v. Ebershoff (U.S. Dist. Ct., Cent. Dist. California, 1991, No. CV91-5446WJR). Apparently, the action was dismissed some time prior to January 12, 1993, the date on which the court ordered the inclusion of attorneys' fees of $125,421.49 in favor of the Graham & James defendants and $37,236.67 in favor of the Fulbright & Jaworski defendants included in the costs

BEST AVAIL

wrongful termination in violation of public policy, including a breach of professional duty, unfair competition and violation of the Uniform Trade Secret Act. Shieh alleged he then was a partner in Fulbright & Jaworski who specialized in Chinese law and related intentional law. He alleged the defendants (several law firms and all the partners therein, as well as some individual practitioners) had engaged in a conspiracy to take Shieh's clients away from him and drive him out of business. The smaller conspiracies encompassed within these grander conspiracies included one in which Fulbright & Jaworski and its partners were the primary actors.

From April 1989 to January 6, 1991, Shieh had been a partner in Lewis, D'Amato, Brisbois & Bisgaard. From September through December 1990, Shieh had several meetings with a number of the

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partners of Fulbright & Jaworski to discuss the possibility of Shieh becoming a partner in that firm. Shieh described problems he had encountered with other attorneys interfering with his client relationship while he was employed by Graham & James. These attorneys had attempted to take his clients as their own. Additionally, Shieh pointed out that his Chinese clients had ways of thinking and methods of doing business which differed from those of American clients. He requested that he be informed and give his consent before anyone at Fulbright & Jaworski contacted his clients. Hathaway agreed; he assured Shieh that no one at Fulbright & Jaworski was interested in taking away Shieh's clients. Hathaway and Ebershoff promised "they would assign litigation and transactional attorneys to work under Shieh's direction as a separate Chinese practice group."

On approximately December 20, 1990, Hathaway and Shieh agreed Shieh would receive at least $200,000 in annual compensation under the guaranteed partner payment program of Fulbright & Jaworski. Shieh was to be assigned 365 partnership units, which Hathaway represented were the equivalent of approximately $200,000 per year; this was confirmed in writing. Accordingly, Shieh accepted the offer to become a partner in Fulbright & Jaworski. In part, the contract under which Shieh became a partner required that no member or agent of the firm interfere with Shieh's relationship with his clients a even if he ceased to be a partner. It further required that the firm release to Shieh all documents, discs, tapes and files pertaining to Shieh's clients. Additionally, Fulbright & Jaworski was obligated to act in good faith in using

discretion to determine what would justify expelling a partner.

Shieh performed all acts required of him in the performance of his contract of partnership, beginning work under the contract on January 7, 1991. However, on January 8, 1991, Hathaway and Ebershoff showed Shieh a copy of a suit which Shieh had filed against Grahm & James but had not yet served. They threatened Shieh that he could not continue as a Fullbright & Jaworski partner unless he immediately dismissed the action with prejudice. The complaint against Graham & James alleged discrimination and retaliation against Shieh because of his race, national origin, religious beliefs, ancestry and age. Hathaway told Shieh the suit must be dropped because Hathaway was seeking office in certain bar associations and Fulbright & Jaworski's Los Angeles office might merge with another law firm in the

future. Consequently, Hathaway did not wish to anger influential law firms. It is Shieh's belief that the firm did not require any other partner to dismiss a personal lawsuit in order to avoid termination as a partner.

On approximately January 9, 1991, Hathaway and Ebershoff imposed as a condition of the continuation of Shieh's partnership in the firm the immediate dismissal with prejudice of the Graham & James suit. Additionally, once the suit was dismissed, Shieh's partnership status would be reviewed after an unspecified period; if Shieh did not meet unspecified requirements, he would be expelled from the partnership. On January 11, 1991, Hathaway and Ebershoff informed Shieh his partnership position would be reviewed on July 31, 1991. It was certain Shieh would continue as a partner, but only if he immediately dismissed the Graham & James

suit. The imposition of such a condition was outside the scope of the contract of partnership. Although Hathaway and Ebershoff confirmed that Shieh could take his clients with him if he left, they and Miller stated they would not permit certain of his clients to follow him from Lewis, D'Amato, Brisbois & Bisgaard to Fulbright & Jaworski unless those clients first paid many thousand of dollars in disputed billings. "This angered these clients and disrupted Shieh's relationship with them."

On approximately February 11, 1991, Ebershoff presented Shieh with the memorandum of understanding, stating Shieh must sign it if he was to remain a partner. Shieh had never before heard of or seen the memorandum, which was dated January 7. The memorandum did not reflect any agreement between Shieh and Fulbright & Jaworski; he did not sign it. It is his

belief that the firm has never required any other partner to sign a similar agreement. As of approximately February 7, 1991, the firm began paying Shieh only 60 percent of his agreed-upon compensation. It is his belief no other partner was removed from the guaranteed partner compensation program without the partner's prior consent.

On March 29, 1991, Hathaway delivered to Shieh a letter purporting to terminate Shieh's status as a partner, effective March 31. He did so without first obtaining a full partnership vote as required by Shieh's contract of partnership. It is Shieh's belief that the firm has never attempted to terminate any other partner's interest in this fashion, and the action was undertaken due to Shieh's refusal to dismiss the Graham & James action or to sign the memorandum of understanding and Hathaway's reluctance to

have the firm involved in Shieh's Chinese law practice. At the same time, Shieh delivered a memorandum to Hathaway and Ebershoff in which he stated he had not agreed to the provisions of the memorandum of understanding.

In May 1991, Shieh obtained authorization from most of his clients by which he could require Fulbright & Jaworski to surrender these clients' files. An agent of Shieh presented these authorizations to an agent of Fulbright & Jaworski on May 15 and requested the files. After some discussion, Shieh's agent was told to return later that day to pick up the files. When the agent returned, she was told the firm refused to release the files. She was again refused the files on the following day. With the exception of few files, the firm has not yet honored the client authorizations.

Since March 29, 1991, Shieh has not authorized any member or agent of the firm to communicate with any of his clients. Instead, he specifically prohibited such communication. Nonetheless, the firm has contacted Shieh's clients repeatedly. In May, June, August and September of 1991, Fulbright & Jaworski sent letters to many of Shieh's client concerning the transfer of their files to Shieh. A letter of August 12 is misleading; it states Francisca Araiza has refused to accept the client files, but does not mention that she did so because she no longer was acting as Shieh's attorney. The letters fail to inform the clients that the firm had refused to release the files to another agent of Shieh. Additionally, the firm sent disputed bills to some of Shieh's clients, misrepresenting that the bills were sent by Shieh as the "requesting attorney."

On February 18, 1993, the superior court declared Shieh to be a vexatious litigant pursuant to Code of Civil Procedure section 391, subdivisions (b)(2), (3) and (4), and ordered that security be posted in the sum of $150,000. The court stayed the action, "except for reconsideration of this order," until 10 days after the security was posted.[2]

It is clear this massive complaint in Shieh v. Ebershoff is simply Shieh's version of the same events recounted in Fulbright & Jaworski's complaint in the instant matter. The allegations made against the remaining defendants are substantially similar in character and content. On March 30, 1993, Shieh filed what is, minus the allegations of RICO

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[2] Notice of appeal were filed in the Ebershoff case on April 2, 1993 (BO74985) and June 3, June 30, July 1 and July 2, 1993 (BO76762). The appeal in BO74985 has no effect on the vexatious litigant order, for Shieh appeals only from the court's order sustaining the demurrer of Lewis, D'Amato, Brisbois & Bisgaard without leave to amend and imposing sanctions on January 29, 1993 and the March 26, 1993 denial of his motion for reconsideration of the sanctions order. In BO76762, Shieh purported to appeal from "any and all rulings, decisions, judgments [sic] and orders . . . rendered, issued or made subsequently in connection with, arising under or relating to the above Orders." He has been ordered to demonstrate that the appeal has merit or face its dismissal.

violations and civil rights violations, essentially an identical complaint in Say & Say[3] v. Miller (Sup. Ct. Orange County, 1993, No. 707971, dismissed July 7, 1993). Shieh has filed similar complaints based on substantially similar facts in Shieh v. Christopher (Super. Ct. Los Angeles County, 1992, No. BC054981); Say & Say v. Castellano (Super. Ct. Los Angeles County, 1992, No. BC054981); Say & Say v. David (Super. Ct. Orange County, 1993, No. 706439); Say & Say v. Lindquist (Super. Ct. Orange County, 1993, No. 706438) and Say & Say v. Layman (U.S. Dist. Ct., Cent. Dist. California, 1991, No. CV916690JGD). In the Christopher, Castellano and Layman cases, as in the Ebershoff case, Shieh acted in propria persona as co-counsel.

In Shieh v. Christopher, Supra, Shieh purported to state causes of action for unfair competition, violation of Labor

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& Say is a corporation owned and controlled solely by Shieh.

Code section 1050 et seq., defamation, invasion of privacy, interference with prospective economic advantage, legal malpractice, breach of fiduciary duty, conversion, breach of contract and inducing breach of contract. In the early and mid-1980s, Shieh worked for O'Melveny & Myers and Gibson, Dunn & Crutcher, assisting the efforts of those firms to establish, maintain and expand a practice in the Pacific Rim. "The initiation, course, termination, and aftermath of those associations are the subject of two prior civil actions brought by Plaintiff: A. Shieh v. Michael Newman, et al., LASC case No. NEC53509 (Appeal pending: 2nd Civil No. BO59327) . . . and L.C. Shieh, et al. v. David I Thompson, et al., LASC Case No. NEC 54381 (Appeal pending: 2d Civil No. BO64714)[4]."

[4] As noted ante, the orders of dismissal were affirmed in Shieh v. Newman (BO59327, Sept. 16, 1992) and Hsieh v. Thompson (BO64714), Feb. 1, 1993).

Once again, Shieh alleges the defendants "determined to stamp out a nettlesome competitor in the Pacific Rim . . . region of the legal services industry," himself. The defendants entertained personal enmity against him and the firms exchanged information about him in pursuant to their common goals. The defendants repeatedly made false statements impugning Shieh's character and the quality of the legal services he provided. These statements were made to Shieh's past or present clients, those thought to be his potential clients and those associated with law firms believed to be considering or to have a professional association with Shieh. The defendants agreed to make such statements jointly and simultaneously in a manner calculated to suggest corroboration of each others' statements. They kept confidential personnel files on Shieh and

disclosed private information about him to each other and to the public at large.

O'Melveny & Myers wrongfully kept clients Shieh had brought to the firm, refusing to release the client files to him. Gibson, Dunn & Crutcher did the same. These defendants knew Shieh had a contractual arrangement with another defendant, Richard Tarlow (Tarlow), Who was acting as his attorney. Defendants attempted to include Tarlow to breach his contract with Shieh. They succeeded.

On December 11, 1992, the superior court declared Shieh to be vexatious litigant in both the Christopher case and the Castellano case pursuant to Code of Civil Procedure section 391, subdivisions (b)(3) and (4), and ordered that he furnish security in the form of 2 bonds for $100,000 each for the benefit of O'Melveny & Myers and Gibson, Dunn & Crutcher jointly and for the benefit of Richard

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Tarlow. The action was stayed pending the furnishing of the security, and the court issued a prefiling order pursuant to Code of Civil Procedure section 391.7 prohibiting Shieh from filing any new litigation in any court of this state without first obtaining leave of the presiding judge of the court in which he sought to file.[5]

On April 22, 1993, the superior court again declared Shieh to be a vexatious litigant in the Castellano case upon the motion of another defendant, Ivy Yuen. The court ordered Shieh to furnish security by posting a bond for $100,000 and stayed the action until the security was furnished; additionally, Shieh was ordered to show cause on June 3 why the action should not

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An appeal filed on May 1, 1993 was dismissed on June 17, 1993. Shieh has again appealed from ders made in these cases, filing notices of appeal in Shieh v. Christopher (BO76400, May 28, 1993; 076762, June 3, 1993) and Say & Say v. Castellano (BO76656, June 1, 1992; BO76709, June 8, 93). In the Christopher case, there is currently pending a motion to dismiss BO76400 for lack of isdiction. We have ascertained that no final judgment had been filed in this case as of June 25 cordingly, nothing in these appeals affects the vexatious litigant order. In the Castellano case, it is possible to ascertain the nature of the rulings from which Shieh's all-encompassing notices purport to peal.

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be dismissed as to Ms. Yuen if the security had not been furnished by that time. Finally, the court scheduled for hearing on May 24 the motion of defendant Household Bank for a similar order. Shieh failed to appear on the latter date, and was adjudged in contempt; a bench warrant currently is outstanding for Shieh. This court recently entertained and denied a petition for a writ of mandate based on these orders (Shieh v. Superior Court (Castellano) (BO76637, July 7, 1993), denied July 15, 1993) and another challenging all vexatious litigant orders in both the Christopher and the Castellano cases (Shieh v. Superior Court (Castellano and Christopher) (BO76677, July 8, 1993), denied July 15, 1993).

In an order dated February 26, 1993, Judge Ted Millard of the Orange County Superior Court, sitting by assignment, heard challenges to Judge Edward Y. Kakita

in the Christopher and Castellano cases, as well as a third case. Judge Millard also declared Shieh to be a vexatious litigant, noting he was waging a "campaign of litigation terror," and District Court Judge Dickran Tevrizian likewise had declared Shieh vexatious. That order is final.

In Say & Say v. Layman, Supra, Shieh alleged attorney Francisca Araiza (Araiza) and Say & Say had an oral agreement under which Araiza would render legal services as assigned by Shieh. Araiza breached the agreement, mishandled cases and cooperated with other defendants to steal files and other property belonging to Say & Say. Additionally, she sent disparaging letters to Shieh's clients and conspired with Imperial Savings with respect to the payment of checks drawn on a particular account. Finally, Araiza filed suit in state court and sought a preliminary

injunction only as a means of harassing Say & Say and Shieh. Based on these allegations, Say & Say and Shieh purported to state causes of action for breach of contract, fraud, conversion, intentional interference with prospective economic advantage, legal malpractice, breach of fiduciary duty, trespass, invasion of privacy, intentional infliction of emotional distress, unfair competition, abuse of process, breach of the covenant of good faith and fair dealing, violation of RICO and violation of federal civil rights. In other words, this action involves facts substantially similar to those of the instant action and other cases and recites an indistinguishable litany of grievous wrongs.

On April 16, 1992, the district court dismissed the state law claims, since they predominated substantially over the deferral claims. On April 21, the court

dismissed the federal claims. On April 21, the court dismissed the federal civil rights claims on the ground that there was no state action alleged, but gave Say & Say and Shieh 10 days in which to amend their complaint. They filed no amendment, and the court dismissed the federal civil rights claims with prejudice on May 20, 1992.

On April 13, 1992, the court heard Araiza's motion to dismiss the remainder of the action for discovery abuse and/or to compel Shieh's attendance at his deposition; another defendant's motions to dismiss, for a protective order staying or limiting discovery and for sanctions against Shieh and a third defendant's motions to dismiss for failure to state a claim and for sanctions against Shieh. On April 14, the court assessed sanctions against Shieh in the aggregate sum of $5,490.50. Plaintiffs moved for

reconsideration of the imposition of sanctions; the motion was heard on June 8, 1992, as was plaintiffs' motion to dismiss the action voluntarily.

The district court denied the motion for reconsideration, dismissed the action with prejudice and, on June 18, ordered Shieh and his co-counsel, James L. Andion (Andion), to show cause why each of them should not be sanctioned for reprehensible conduct during the course of the action. Shieh was ordered to show cause why he should not be sanctioned pursuant to Federal Rules of Civil Procedure, rule 11, for filing the complaint and why he should not be sanctioned pursuant to 28 United States Code section 1927 for filing a reply on June 2 to the opposition to the motion for reconsideration of the sanctions.

On July 21, 1992, plaintiffs sought to disqualify Judge John G. Davies. The

motion for refusal was returned to the court clerk for assignment of a judge to rule on it. On July 29, 1992, Judge Gadbois denied the motion.

In an order filed September 1, 1992, the district court noted that "[b]y signing a document filed with the Court, the signator represents that after reasonable inquiry, the document is well grounded in fact and warranted by existing law, and that it is not interposed for an improper purpose. [Citation.]" Shieh had signed the complaint, which purported to state 12 state causes of action, a RICO claim and a federal civil rights claim. However, the plaintiffs had not alleged any state action in their civil rights claim and failed to amend when given the opportunity to do so. Consequently, the civil rights claim was dismissed. Additionally, plaintiffs never filed the RICO case statement required by court order;

instead, they expressed a desire to abandon that claim.

The district court concluded, "[a]n objective review of plaintiffs' complaint reveals the paucity of their federal claims. The allegations concerning civil rights and RICO are completely insufficient to support those cause of action. Plaintiffs admitted as much by failing to amend their civil rights claim and by failing to file a RICO case statement. Thus, plaintiffs' complaint was not well grounded in fact nor warranted by existing law. The complaint was frivolous and was filed in this Court to harass, and to frustrate the progress of a state court action previously filed by Ms. Araiza." Accordingly, Shieh must be sanctioned for his conduct. The court thereupon imposed sanctions of $7,500 for filing the complaint to be paid to Araiza and her

attorneys within 20 days of the entry of the order.

The court additionally noted Shieh was "liable for sanctions for his involvement in the filing of Plaintiffs' Reply. The Court has inherent power to impose sanctions against both attorneys and parties for bad faith conduct in litigation. [Citation.] 'Bad faith' means that the party or counsel acted 'vexatiously, wantonly, or for oppressive reasons.' [Citation.]" Shieh was both a named plaintiff and an attorney for the plaintiffs. His name appears as counsel on the reply, "which contains inflammatory, disparaging and uncivil remarks directed at both the parties interested in this action and the Court. The Court finds that the Plaintiffs' Reply was filed in bad faith and for vexatious reasons." Accordingly, the court imposed sanctions of $2,500 against Shieh for the filing of

the reply. That sum was to be paid to the court clerk within 20 days of the entry of the order.[6]

In Short, the court declared Shieh to be a vexatious litigant. He had filed a groundless, wholly frivolous complaint with highly improper motives and had filed other documents for purely vexatious reasons.

DISCUSSION

Subdivision (b)(4) of Code of Civil Procedure section 391 defines a vexatious litigant as a person who "[h]as previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence." It is immaterial that Shieh presently is

[6] The court also imposed sanctions of $2,500 against Andion.

represented by counsel. (Muller v. Tanner (1969) 2 Cal.App.3d 438, 444.) As outlined ante, Shieh has been declared a vexatious litigant in the United States District Court for the Central District of California and by two separate superior court judges in three district cases, all of which are based on facts substantially similar and make claims substantially similar to the facts asserted and claims made in the litigation underlying the Fulbright & Jaworski appeals. Hence, he clearly fits the definition of a vexatious litigant.

Moreover, since Shieh's appeals in the instant matter have been dismissed, there clearly is no likelihood he will prevail. While Shieh may receive one of the appeals partially upon timely payment of the sanctions which are the subject of the order from which he appeals, the general tenor of his conduct in the trial and

appellate courts of this state demonstrates that there still will be no reasonable likelihood that he will succeed in overturning the award of sanctions.

The repeated imposition of sanctions in the trial courts and this court, the requirement that he post security in two superior court actions and the existence of other prefiling orders has had no discernible effect on Shieh's out-of-control litigation. Consequently, we have no choice but to impose our own prefiling order pursuant to Code of Civil Procedure section 391.7, subdivision (a).

The court finds that Liang-Houh Shieh is a vexatious litigant within the meaning of Code of Civil Procedure section 391, subdivision (b)(4). Ordinarily, pursuant to section 391.7, subdivision (a) of the Code of Civil Procedure, Shieh would not be permitted to file "any new litigation in the courts of this state in propria

persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed." This case, however, breaks the mold.

It is apparent from syntax, grammar, style and tone that, both in the trial courts and in this court, many -- if not most -- of the pleadings and other documents filed by Shieh or on his behalf have been written by the same person. This is the case even though Shieh has filed many of the initial pleadings in propria persona and then associated in co-counsel or substituted in a variety of replacement counsel, some of whom in turn become defendants in new litigation Shieh initiates. It is patently obvious that <u>every</u> writ petition, notice of appeal, appellant's brief and opposition to orders to show filed in this division has been drafted by the same hand, even though Shieh ostensibly has appeared in propria

persona and through two separate attorneys, Guy Rollins and James L. Andion.

In short, it is clear that Shieh does not engage attorneys as neutral assessors of his claims, bound by ethical considerations not to pursue unmeritorious or frivolous matters on behalf of a prospective client. (Cf. Taliaferro v. Hoogs (1965)236 Cal.App.2d 521, 527.) Rather, these attorneys who ostensibly "represent" Shieh serve as mere puppets. Based on these facts, we conclude a prefiling order limited to Shieh's in propria persona activities would be wholly ineffective as a means of curbing his out-of-control behavior.

Accordingly, Liang-Houh Shieh may not file any new litigation in the courts of this state, whether in propria persona or through an attorney, without first obtaining leave of the presiding judge of

the court in which he proposes to file the litigation, as provided in Code of Civil Procedure section 391.7, subdivision (b). Moreover, whether he acts in propria persona or through an attorney, before filing appeals or writ petitions in this court, Shieh must seek leave from the Administrative Presiding Justice. Disobedience of this order will be punished as a contempt of court. (Id., subd. (a).) The clerk of this court is directed to provide a copy of this opinion and order to the Judicial Counsel. (Id., subd. (d).) Copies shall also be mailed to the presiding judges and clerks of the Los Angeles, Orange and Ventura County Superior Courts and each branch of the Los Angeles County Municipal Court. Additionally, inasmuch as Shieh is an attorney, and engaging in vexatious litigation smacks of grievously unethical

conduct, a copy shall be mailed to the State Bar.

Finally, we wish to provide some guidance to the trial courts. Every court has the power "[t]o compel obedience to its . . . orders . . ." (Code Civ. Proc., §128, subd. (4).) Shieh currently has outstanding in the trial courts $305,326.90 in unpaid sanctions in five separate cases. We suggest to the trial courts that it would be appropriate, upon notice and an opportunity to be heard, to consider dismissing these cases for failure to pay the sanctions.

CERTIFIED FOR PUBLICATION

SPENCER, P.J.

We concur:

ORTEGA, J.

VOGEL (Miriam A.), J.